IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3707 OF 2006

Elder Pharmaceuticals Ltd. ..Petitioner.

Vs.

Krishna Vithal Bendre & anr. ..Respondents.

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Mr. S.P. Salkar for the Petitioner.
Mr. B.J. Shah for Respondent No.1.

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CORAM: DR. D.Y. CHANDRACHUD, J.

13th July, 2006.

ORAL ORDER :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. The First Respondent was employed as a packer with the Petitioner on 1st January, 1988. While he was working with the company, a complaint was lodged by Francis D'Souza, an employee of the company that on 7th February, 1995 the First Respondent assaulted him while on duty. A notice to show cause was issued to the First Respondent calling upon him to explain as to why disciplinary action should not be taken against him. The First Respondent submitted a reply. The management decided to

convene a disciplinary proceeding against the First Respondent inter alia on charges of drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment and for the commission of an act subversive of discipline and good behaviour. The First Respondent denied the charges. An Enquiry Officer was appointed to conduct the disciplinary enquiry. The management as well as the workman were represented in the course of the enquiry. Mr. Francis D'Souza was examined in the course of the disciplinary proceedings . The workman deposed in the course of the enquiry. The Enquiry Officer completed his enquiry on 5th July, 1995. According to the management the workman was furnished with an opportunity to defend himself and the enquiry was conducted in Marathi, a language known and understood by the workman. The report of the enquiry officer was submitted on 21st July, 1995. The charge of misconduct was held to be proved. The report was forwarded to the First Respondent on 29th July, 1995 so as to enable him to submit his reply to the findings. The First Respondent availed of that opportunity and submitted his reply on 7th August, 1995. By an order dated 14th August, 1995 the management came to the conclusion that the charges against the workman stood established. The charges

were of a serious and grave nature. Though there was no adverse past record the management decided to dismiss the workman having regard to the serious nature of the misconduct and the gravity thereof.

3. An industrial dispute was raised and referred to adjudication. Initially, on 10th October, 2001 the Labour Court held that the enquiry was not fair and proper and that the findings were perverse. The Part I award was impugned before this Court and on 10th June, 2002 a Learned Single Judge of this Court set aside with the consent of both the parties that award and remitted the proceedings back to the Labour Court. Parties thereafter led evidence on the fairness of the enquiry and by an order dated 31st March, 2005 the Labour Court came to the conclusion that the enquiry was fair and proper and that the findings were not perverse. Thereafter oral evidence was adduced on the quantum of punishment. The First Respondent deposed in his support whereas the management adduced the evidence of its own witness.

4. By its order dated 31st December, 2005, the Labour

Court came to the conclusion that the misconduct on the part of the workman stood established. However, the punishment was held to be shockingly disproportionable. In the circumstances, the management has been directed to reinstate the workman with 50% back wages. The Labour Court has also directed the management to stop two increments with cumulative effects.

5. On behalf of the management it has been submitted that the finding of misconduct that was arrived at in the course of the disciplinary enquiry has been held to be duly proved. The enquiry has been held to be fair and proper. The charge of assault on the premises of the establishment which is proved is a serious charge. In these circumstances, it was submitted that there was absolutely no warrant or justification for the Labour Court to conclude that the punishment is shockingly disproportionate. On the other hand, counsel appearing for the First Respondent supported the order of the Labour Court.

6. The narration of facts would make it clear that the disciplinary enquiry that was convened by the employer has been held to be fair and proper. The finding of misconduct has been

held to be duly proved. The workman in the present case had been charged with an act of assault on a co-workman. The finding of misconduct is that within the meaning of Model Standing Order 24(k) the workman was guilty of drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment and, within the meaning of Model Standing Order 24 (l), he was guilty of the commission of an act subversive of discipline or good behaviour on the premises of the establishment. On the findings of the Labour Court as they stand, there is absolutely no warrant or justification for the Labour Court to interfere with the punishment. The only reason that has been advanced by the Labour Court is that the punishment of dismissal would “amount to death penalty, which is not permissible in law”. The reasoning of the Labour Court is ex facie fallacious and would warrant interference of this Court under Article 227 of the Constitution. An act of assaulting a co-workman on the premises of the establishment is a serious act of misconduct and cannot be condoned. Dismissal from service is undoubtedly the most severe of punishments that lie in the disciplinary jurisdiction of the employer. The power of the Labour Court or of the Industrial Tribunal under Section 11A of the Industrial Disputes Act, 1947 is

wide. The width of the power will justify intervention where the employer has acted arbitrarily, in a whimsical fashion or with an intent to victimise. The Labour Courts and Industrial Tribunals must however be conscious to the realisation that in an economy poised on a model of industrial growth there is no place for industrial indiscipline. Indiscipline is an anathema to a stable and productive industrial environment. Where a breach of discipline is found to be proved and a charge of misconduct is established, the Labour Court or Industrial Tribunal will not intercede on the supposition that it wields an uncharted armoury in its equitable jurisdiction. Equitable jurisdiction is also subject to the discipline of a judicious exercise.

7. The employer had duly considered the past record and, while noting that there was nothing adverse therein, nevertheless came to the conclusion that the serious nature and gravity of the misconduct warranted a punishment of dismissal. The Labour Court was not justified in interfering with the punishment for the reason which has weighed with that Court.

8. In the circumstances, the award of the Labour Court

dated 31st December, 2005 is quashed and set aside. Reference (IDA) 161 of 1997 shall according stand dismissed. The Petition is allowed in the aforesaid terms. There shall be no order as to costs.